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IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			REFAI, RAMSEY	
			ART UNIT	PAPER NUMBER
			2152	

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/838,368

Applicant(s)

DUTTA ET AL.

Examiner

Ramsey Refai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-4, 6-21 and 23-39 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

Responsive to Amendment received on June 10, 2005. Claims 5 and 22 have been canceled. Claims 1, 6, 7, 14, 17, 18, 23, 25-27, 36, and 39 have been amended. Claims 1-4, 6-21, and 23-39 are now presented for examination.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites "a request" in line 10. It is not clear whether this is the same request as "a request" in line 5.

Claim 17 recites the limitation "the wireless client" in line 10. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

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patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 6-8, 14-17, 25, 27-30, and 36-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Lazaridis et al (U.S. Patent No. 6,401,113).

5. As per claim 1, Lazaridis et al teach a method for backing up data, the method comprising:

establishing at a server a connection with a wireless device over a wireless network using a wireless protocol (**column 1, lines 22-25 and 30-43**);

pushing, over the wireless network to the wireless device, a request to backup data (**column 7, lines 31-34 and column 4, lines 45-46, column 1, lines 30-67**), wherein the step of pushing the request comprises a textual based service load to a proxy, wherein the proxy is configured to translate the textual based service load to a binary service load and send the translated binary based service load to the wireless device (**column 6, lines 9-17 and Figure 1, element 20; a wireless gateway that forms a bridge between the WAN and a wireless network. This must inherently convert textual based loads to binary service loads in order to send data from a wireline to a wireless network**);

receiving the data from the wireless device (**column 7, lines 31-34 and column 4, lines 45-46**); and

storing the data on, a storage device coupled to the wireless network (**column 3, lines 12-13**).

6. As per claim 2, Lazaridis et al teach a connection is established in response to receipt of an indication that the wireless device has been powered on (**column 11, lines 35-64 and column 7, lines 15-34**).

7. As per claim 3, Lazaridis et al teach a connection is established periodically (**column 2, lines 7-9**).

8. As per claim 4, Lazaridis et al teach a connection is established in response to receipt of a request to backup data from the wireless device (**column 3, lines 22-24 and column 7, lines 15-36**).

9. As per claim 6, Lazaridis et al teach a service load provides a uniform resource identifier for an application that the wireless may retrieve to transmit the data to the server (**column 4, line 40-45**).

10. As per claim 7, Lazaridis et al further teaches the steps of:

sending a request by the wireless device to the proxy to retrieve the application identified by the uniform resource identifier; receiving the application by the wireless device; and executing the application by the wireless device to transfer the data requested to be backed up (**column 4, lines 34-56, column 3, lines 3, lines 14-30, column 1, lines 44-50**).

11. As per claim 8, Lazaridis et al teach a connection between the server and the wireless device uses unused extra bandwidth (**column 1, lines 25-30**).

12. As per claim 14, Lazaridis et al teach a method for backing up data, the method comprising:

responsive to receipt of a command from a backup server via a wireless network to backup data, retrieving without user intervention, the data to be backed up from storage within a wireless client (**column 7, lines 31-34 and column 4, lines 45-46, column 1, lines 30-67**); and transmitting, without user intervention, the data to be backed up to the backed up server via the wireless network utilizing a wireless protocol (**column 6, lines 4-13**), wherein the command from the backup server comprises a location of an application to be executed by the wireless client to transmit the data to be backed up to the backup server (**column 4, lines 34-56**).

13. As per claim 15, Lazaridis et al teach that the data to be backed up is sent to the server by way of a proxy server and is sent using a wireless application protocol (**Figure 1, column 6, lines 1-18**).

14. As per claim 16, Lazaridis et al teach:

transmitting a request to the backup server via the wireless network to retrieve backed up data; receiving the backed up data from the backup server via the wireless network; and storing the backed up data on the wireless client (**column 4, lines 34-56, column 3, lines 3, lines 14-30, column 1, lines 44-50**).

15. As per claim 17, Lazaridis et al teach:

establishing at a server a connection with a wireless device over a wireless network using a wireless protocol (**column 1, lines 22-25 and 30-43**);

pushing, over the wireless network to the wireless device, a request to backup data, (**column 7, lines 31-34 and column 4, lines 45-46**);

receiving the data from the wireless device (**column 7, lines 31-34 and column 4, lines 45-46**); and

storing the data on, a storage device eel coupled to the wireless network, wherein the data stored on the storage device is backed up data (**column 3, lines 12-13**);

receiving a request for the backed up data from the wireless client (**column 1, lines 44-50, column 3, lines 14-30, column**;

retrieving the backed up data; and transmitting the backed up data to the wireless client via the wireless network.

16. As per claim 25, 27-30, and 36, these claims contain similar limitations as claims 1-4 and 6-8 above, therefore are rejected under the same rationale.

17. As per claim 37, Lazaridis et al teach a wireless device is a wireless phone (**column 6, lines 38-44**).

18. As per claim 38, Lazaridis et al teach a wireless device is a personal digital assistant (column 6, lines 38-44).

19. As per claim 39, Lazaridis et al teach a receiver wherein the receiver receives a request for backed up data from the wireless client and further comprising: a retrieval unit which retrieves the backed up data corresponding to the wireless client; and a transmitter which transmits the backed up data to the wireless client (column 4, lines 26-56).

*Claim Rejections - 35 USC § 103*

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 9-13, 18-21, 23, 24, 26, and 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazaridis et al (U.S. Patent No. 6,401,113) in view of Zarom (U.S. Patent No. 6,356,529)

22. As per claim 9, Lazaridis et al teach a method on a proxy server for facilitating data backup, the method comprising:

receiving a request from a backup server for a wireless client to backup data to the backup server (column 7, lines 31-34, column 4, lines 45-56 and column 4, lines 46-56);



sending the request to the wireless client over a wireless network (**column 7, lines 31-34, column 4, lines 45-56 and column 4, lines 46-56**);

receiving over the wireless network the data from the wireless client (**column 4, lines 46-56**); and

sending the data to the backup server (**column 4, lines 46-56**).

23. Though Lazaridis et al teaches a wireless gateway server that bridges between a wireline network and a wireless network and inherently converts data into suitable formats for respective networks (**column 6, lines 9-17 and Figure 1, element 20**), Lazaridis et al does not explicitly teach that data sent from a server in a first protocol is converted into a second protocol compatible with a wireless device and data from a wireless device is converted from a third protocol into a fourth protocol compatible with the server.

24. However, Zarom teaches a translation system that includes a proxy server connected to a wireless device and a server, which converts WAP protocol instructions to HTTP and TCP/IP protocol instructions. The same process is followed in reverse when the original server converts the requested content into WAP-compatible format (**Figure 1 and column 2, lines 2-20**). It would have been obvious to combine the teachings of Lazaridis et al and Zarom because Zarom's use of a proxy server that converts data from a wireless protocol into HTTP instructions and vice versa in Lazaridis et al would allow for a wireless device to communicate with a server using a proxy server that converts data from a wireless protocol into an HTTP protocol, thereby allowing the ability to back-up data on a wireless device onto storage located at a remote server.

25. As per claim 10, Lazaridis et al teach the request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server (**column 4, lines 40-45 and column 6, lines 9-17**).

26. As per claim 11, Lazaridis et al teach a translated request is a binary-based service load (**column 4, lines 46-56**).

27. As per claim 12, Lazaridis et al fail to teach a third protocol is a wireless application protocol.

28. However, However, Zarom teaches the use of a WAP protocol (**column 1, lines 25-35**). It would have been obvious to combine the teachings of Lazaridis et al and Zarom because Zarom's use of a proxy server that converts data from a wireless protocol into HTTP instructions and vice versa in Lazaridis et al would allow for a wireless device to communicate with a server using a proxy server that converts data from a wireless protocol into an HTTP protocol, thereby allowing the ability to back-up data on a wireless device onto storage located at a remote server.

29. As per claim 13, Lazaridis et al teach a fourth protocol is a hypertext transfer protocol (**column 6, lines 1-13**).

30. As per claim 18, this claim similar limitations as claim 9 above except for the following limitation: wherein the request comprises a textual based service load to a proxy, wherein the

proxy is configured to translate the textual based service load to a binary service load and send the translated binary based service load to the wireless device. Lazaridis et al further teach this limitation in **column 6, lines 9-17 and Figure 1, element 20; (a wireless gateway that forms a bridge between the WAN and a wireless network. This must inherently convert textual based loads to binary service loads in order to send data from a wireline to a wireless network ).**

31. As per claim 19, Lazaridis et al teach the connection is established in response to receipt of an indication that the wireless device has been powered on (**column 11, lines 35-64 and column 7, lines 15-34**).

32. As per claim 20, Lazaridis et al teach instructions for establishing the connection periodically (**column 2, lines 7-9**).

33. As per claim 21, Lazaridis et al teach the connection is established in response to a request to backup data received from the wireless device (**column 3, lines 22-24 and column 7, lines 15-36**).

34. As per claim 23, Lazaridis et al teach a service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server (**column 4, lines 40-45**).

35. As per claim 24, this claim contains similar limitations as claim 9 above, therefore is rejected under the same rationale.

36. As per claim 26, Lazaridis et al teach a fifth instructions for enabling the receipt of a request for backed up data from a the wireless client (**column 3, lines 22-24 and column 7, lines 15-36**) sixth instructions for retrieving the backed up data corresponding to the wireless client (**column 4, lines 45-56 and column 7, lines 45-56**); and seventh instructions for enabling the transmission of the backed up data to the wireless client via the wireless network (**column 4, lines 45-56 and column 7, lines 45-56**).

37. As per claim 31-35, these claims have similar limitations as claim 9-13 above, therefore are rejected under the same rationale.

### ***Response to Arguments***

38. Applicant's arguments filed June 10, 2005 have been fully considered but they are not persuasive.

- In the remarks, Applicant argues in substance that:
  - a. Lazaridis et al's wireless gateway does not provide any type of translation of textual based loads to binary service loads;
  - b. Lazaridis et al does not teach the service load provides a uniform resource identifier for an application that the wireless device may retrieved to transmit data to server;

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- c. Lazaridis et al does not teach that method of claim 9 is “*on a proxy server*”.
- In response to argument:
    - a. Examiner respectfully disagrees. Lazaridis et al teach a wireless gateway that inherently is able to convert a textual based load to a binary service load (see column 6, lines 9-17 and Figure 1, element 20). Examiner insists that one skilled in that art would recognize that a wireless gateway that bridges a wired network to a wireless network would need to convert data into a format suitable for the wireless network. As proof of this inherent nature of a wireless gateway, the Examiner points to the following references:

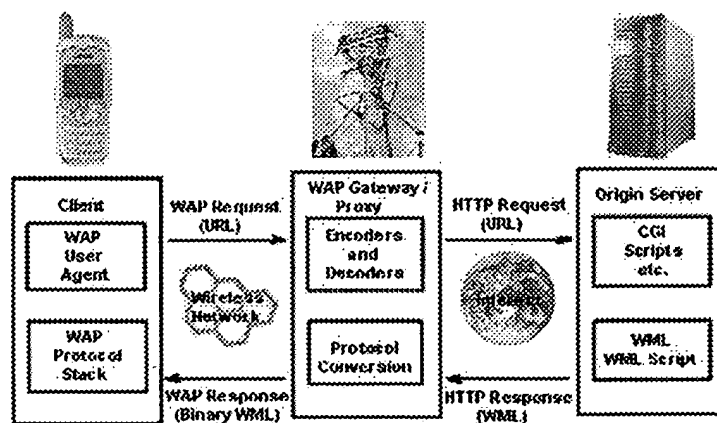
Mobilefish.com

Author: Robert Lie

Last updated: 08/08/2005 18:02:35

URL: [http://www.mobilefish.com/tutorials/how\\_wap\\_works/how\\_wap\\_works.html](http://www.mobilefish.com/tutorials/how_wap_works/how_wap_works.html)

## How WAP works



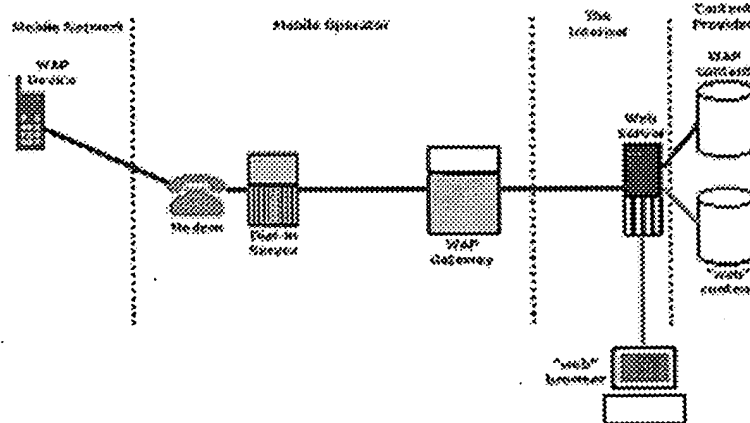
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1. On your WAP enabled device, you type in the URL for a site, for instance <http://www.mobilefish.com/wap>
2. The WAP device sends the request to a WAP gateway. The WAP gateway is the link between the wireless world and the wired world (internet).
3. The WAP gateway forwards the request to a web server or a WAP server, depending on the URL you have typed in.  
Note: A WAP server is merely a web server and a WAP gateway on the same computer, and it is usually located inside a firewall on the content provider's network (the firewall is optional).
4. The web server sends the **textual** requested wml page back to the WAP gateway. If a request is send to a WAP server, it sends a **binary** formatted wml page back to the WAP gateway.
5. If a **textual** requested wml is received by the WAP gateway it compiles the page into tokenized WML, or WMLC. This binary data takes far less space and thus quicker to send. If a **binary** requested wml is received by the WAP gateway it skips the compilation process.
6. The WAP gateway sends the **binary wml page to the WAP device**.
7. The WAP device de-compile the wml page and displays it on the device screen.

Also from <http://www.thewirelessfaq.com/1.9.asp>

#### 1.9 How does a WAP device connect to the Internet?

The normal implementation of a WAP scenario looks pretty much like this:



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In the figure above, starting from the left, you'll find the mobile WAP device attached to the mobile network (GSM, CDDA, etc) which dials the modem attached to a dial-in server (RAS, or Remote Access Service). This server gives the WAP device access to the protocols it needs. These are the same lower level protocols as a normal Internet Service Provider will give you. This is known as PPP or Point-to-Point Protocol.

These protocols are used to access the next step in the chain, the WAP gateway, in this figure hosted by the mobile operator. The WAP gateway is the link between the wireless and the "web" world, basically giving the WAP device access to the common internet.

Another way of explaining it, and in a bit more detail would be to say that when you type in the URL for a site on your WAP device, for instance <http://wap.colorline.no/> the WAP device first checks if it already has an open connection, if not it dials up the PPP provider as described above. After the PPP provider has given the WAP device the required protocols and assigned it an IP address, the request for the URL is sent to the gateway. The WAP gateway, now under "control" of the WAP device requests the URL with a normal HTTP request, such as **GET <http://wap.colorline.no/>**.

On the internet, there is a normal "web" server which in this case holds both WAP and "web" contents, which now receives the request to send out the contents located at the <http://wap.colorline.no/> URL. Also note the normal "web" browser at the lower part of the figure. The web server, depending on which type of browser it is talking to (WAP or "web"), sends out WAP, represented by the blue line, or "web" content represented by the green line.

***Following the requested content back to the WAP device, the contents, if they are in so called textual WML code (the human readable type), the WAP gateway compiles the textual WML into so called tokenized WML, or WMLC, where basically the code is "compressed" down into binary data (the machine readable type). This tokenized WML is then passed back to the WAP device. If the contents from the web server is already in tokenized WML format, the WAP gateway skips this operation. The reason for the conversion from textual WML to tokenized WML is to reduce bandwidth usage. A WAP device's WML browser can only read tokenized WML.***

***Finally, back at the WAP device that requested the URL, the WML browser, when receiving the tokenized WML code renders the contents on the WAP device's display to present a card for the user.***

These references prove that a wireless gateway converts textual based loads to binary-based loads when bridging between a wired and a wireless network.

b. Examiner respectfully disagrees. Lazaridis et al teach that an Internet based redirector program could be accessible through a secure webpage or other interface. This program can be accessed through a webpage that would contain a universal resource identifier or a web address. (see column 4, lines 40-56, column 2, line 65-column 3, line 25).

c. In response to applicant's arguments, the recitation "*on a proxy server*" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ramsey Refai  
Examiner  
Art Unit 2152

RR  
August 9, 2005

LARRY D. DONAGHUE  
PRIMARY EXAMINER

